

## Commodity Futures Trading Commission

## § 12.401

(2) Make a determination whether or not the respondent has violated any provision of the Commodity Exchange Act, or rule, regulation or order thereunder;

(3) Make a determination whether the complainant is liable to any respondent who has made a counterclaim in the proceeding;

(4) Determine the amount of damages, if any, that the complainant has sustained as a result of respondent's violations, the amount of punitive damages if warranted, and the amount, if any, for which complainant is liable to a respondent based on a counterclaim; and

(5) Include an order directing either the respondent or the complainant, depending upon whose liability is greater, to pay an amount based on the difference in the amounts determined pursuant to paragraph (b)(4) of this section, on or before a date fixed in the order.

(c) *Costs, prejudgment interest.* Except as provided in §§12.30(c) and 12.315 of these rules, the Administrative Law Judge may, in the initial decision, award costs (including the cost of instituting the proceeding and, if appropriate, reasonable attorney's fees) and, if warranted as a matter of law under the circumstances of the particular case, prejudgment interest, to the party in whose favor a judgment is entered.

(d) *Effect of initial decision.* The initial decision and order shall become the final decision and order of the Commission, without further order by the Commission, thirty (30) days after service thereof, except that:

(1) The initial decision shall not become the final decision as to a party who shall have timely filed and perfected an appeal thereof to the Commission, in accordance with §12.401 of these rules; and

(2) The initial decision shall not become final as to any party to the proceeding if, within thirty (30) days after service of the initial decision, the Commission itself shall have placed the case on its own docket for review or stayed the effective date of the initial decision.

(e) *Effect of failure to file and perfect an appeal to the Commission.* Unless the

Commission takes review of an initial decision on its own motion, the timely filing and perfection of an appeal to the Commission of the initial decision is mandatory as a prerequisite to appellate judicial review of a final decision and order entered pursuant to these rules.

[49 FR 6621, Feb. 22, 1984; 49 FR 15070, Apr. 17, 1984, as amended at 59 FR 9638, Mar. 1, 1994]

### **§ 12.315 Consequences of overstating damages claims not in excess of \$30,000.**

If a party, who has claimed damages in excess of \$30,000, is adjudged to be entitled to recover less than the sum or value of \$30,000, computed without regard to a damage award to which an opposing party may be adjudged to be entitled, and exclusive of interest and costs, the Administrative Law Judge may assess such party the cost of the transcript of an oral hearing, if such a hearing is held, and, depending upon whether such party paid any part of the filing fee for the proceeding, deny the party such costs or impose such costs on that party.

[49 FR 6621, Feb. 22, 1984, as amended at 59 FR 9638, Mar. 1, 1994]

## **Subpart F—Commission Review of Decisions**

### **§ 12.400 Scope and applicability of rules.**

The rules set forth in this subpart are applicable to proceedings forwarded pursuant to §12.26 (b) and (c) of these rules. Except as provided in §§12.106(e) and 12.403(b) of these rules, the rules set forth in this subpart are not applicable to proceedings forwarded pursuant to §12.26(a) of the Reparation Rules.

[49 FR 6621, Feb. 22, 1984; 49 FR 15070, Apr. 17, 1984]

### **§ 12.401 Appeal to the Commission.**

(a) *How effected.* Any aggrieved party to a proceeding forwarded pursuant to §12.26 (b) or (c) of these rules may appeal to the Commission an initial decision or other disposition of the entire proceeding by complying with the requirements of this section. An appealing party shall serve upon all parties